

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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SEP -3 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0124-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
FRANCISCO RENE MENDIBLES,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063763

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Barton & Storts, P.C.
By Brick P. Storts, III

Tucson
Attorneys for Petitioner

B R A M M E R, Presiding Judge.

¶1 In September 2007, petitioner Francisco Mendibles was sentenced to serve a total of 11.25 years in prison after a jury had found him guilty of three felonies—theft of a motor vehicle, third-degree burglary, and possession of burglary tools—and he had

admitted having two historical prior felony convictions.¹ This court affirmed his convictions and enhanced sentences on appeal. *State v. Mendibles*, No. 2 CA-CR 2009-0042 (memorandum decision filed Jan. 20, 2010). He subsequently filed, and later supplemented, a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., alleging trial counsel had rendered ineffective assistance in several respects. In this petition for review, Mendibles challenges the trial court’s denial of relief following an evidentiary hearing.

¶2 The pertinent underlying facts are these. In October 2006, Mendibles was arrested while driving a vehicle that had been stolen the previous day. The car had been “trashed on the inside,” its steering column had been cracked open and the ignition ripped apart, and an in-dash compact disc player had been removed. The arresting officer found a screwdriver inside the car, and Mendibles acknowledged having to use a screwdriver to start the engine.

¶3 In his petition below, Mendibles alleged trial counsel had rendered ineffective assistance in four ways: (1) by failing to object at trial to the permissive-inference instruction the trial court gave, employing the language of A.R.S. § 13-2305(1),² on the ground the instruction unconstitutionally permitted the jury to infer only

¹Mendibles was sentenced simultaneously in another case, No. CR20071038, in which he had pled guilty to one count of forgery. The trial court ordered his presumptive, 2.5-year sentence in CR20071038 served consecutively to the three concurrent sentences imposed in this case.

²Section 13-2305(1) provides: “Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession

that Mendibles “was aware of the risk that the car was stolen” and not that he “knew or had reason to know” it had been stolen, as A.R.S. § 13-1814(A)(5) requires;³ (2) by failing to object—apparently during the prosecutor’s closing argument—to the “use” or application of the permissive inference to the burglary and possession-of-burglary-tools charges; (3) by asking the court not to give jury instructions on any lesser-included offenses; and (4) by failing to provide Mendibles with sufficient information about the consequences of accepting or rejecting a plea agreement offered by the state and by failing to request a hearing pursuant to *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000).⁴

¶4 The trial court held an evidentiary hearing pursuant to Rule 32.8, at which Mendibles and trial counsel both testified. The court subsequently denied relief in a detailed written ruling, and this petition for review followed. We will not disturb a denial of post-conviction relief unless the court clearly has abused its discretion, *State v. Mata*, 185 Ariz. 319, 331, 916 P.2d 1035, 1047 (1996), and our review of its ruling is “highly deferential.” *Id.*, quoting *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

of the property was aware of the risk that it had been stolen or in some way participated in its theft.”

³Pursuant to § 13-1814(A)(5), a person commits theft of a means of transportation if the person knowingly and without authority “[c]ontrols another person’s means of transportation knowing or having reason to know that the property is stolen.”

⁴On review, Mendibles challenges the trial court’s denial of post-conviction relief on only the first three of these four grounds. He has abandoned his claim that counsel was ineffective in connection with the plea offer.

¶5 The trial court’s thorough minute entry has identified clearly, analyzed adequately, and resolved correctly each of Mendibles’s assertions of ineffective assistance by trial counsel, and the record supports its factual findings. Because the petition for review presents no arguments or issues that we need address separately, we approve and adopt the trial court’s minute entry. We find no abuse of its discretion in denying post-conviction relief for the reasons it has articulated. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly identifies and rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”).

¶6 We grant the petition for review, but we deny relief.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge